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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,484	02/02/2001	Alan J. Ying		1879

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MERCURYMD INC  
9 FOREST OAKS DRIVE  
DURHAM, NC 27705

EXAMINER

NAJARIAN, LENA

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/776,484

Applicant(s)

YING ET AL.

Examiner

Lena Najarian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-17,19-21,23,25-27,29,30,32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-17,19-21,23,25-27,29,30,32 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed 7/31/06.  
Claims 1, 3-17, 19-21, 23, 25-27, 29-30, 32, and 34 are pending. Claims 1, 3-5, 8-9, 17, 25, 29, 32, and 34 have been amended. Claims 2, 18, 22, 24, 28, 31, and 33 are canceled.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1 and 3-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.  
  
(A) Claim 1 recites "wherein formatting said medical records comprises providing ergonomic actuators within said medical records...." It is unclear to the Examiner how the step of *formatting* provides ergonomic actuators *within* medical records. Clarification is required.  
  
(B) Claims 3-8 incorporate the deficiencies of claim 1, through dependency, and are also rejected.

### ***Response to Amendment***

4. The amendment to the claims filed on 7/31/06 does not comply with the requirements of 37 CFR 1.121(c) because no claim text shall be presented for

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any claim in the claim listing with the status of "canceled" (note claim 6).

Amendments to the claims filed on or after July 30, 2003 must comply with 37

CFR 1.121(c).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4-5, 7-9, 15-17, 19, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5,867,821) in view of Brown (5,918,603).

(A) Referring to claim 1, Ballantyne discloses a method of presenting medical records for use by a medical provider, comprising (col. 10, lines 10-20 of Ballantyne):

formatting medical records for presentation on a mobile terminal (col. 14, lines 6-39 of Ballantyne);

and moving between different screens containing different classes of medical information regarding an associated patient (col. 9, lines 16-32 of Ballantyne).

Ballantyne does not expressly disclose wherein formatting said medical records comprises providing ergonomic actuators within said medical records,

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wherein each ergonomic actuator is large enough to allow actuation via a user's finger.

Brown discloses wherein formatting said medical records comprises providing ergonomic actuators within said medical records, wherein each ergonomic actuator is large enough to allow actuation via a user's finger (Fig. 3, col. 4, lines 49-54, and Fig. 12 of Brown).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Brown within Ballantyne. The motivation for doing so would have been to provide a user-friendly interface.

(B) Referring to claim 4, Ballantyne discloses further comprising delivering one or more of said formatted medical records to a personal digital assistant (Fig. 1, item 10 and col. 3, lines 60-65 of Ballantyne).

(C) Referring to claim 5, Ballantyne discloses further comprising extracting said medical records from a hospital database prior to formatting said medical records for presentation on the mobile terminal, wherein extracting said medical records includes determining structure of the hospital database (col. 3, line 60 – col. 4, line 3 and col. 6, lines 16-19 of Ballantyne).

(D) Claim 8 was amended to recite "of the medical records" instead of the previously recited "medical record." However, these changes do not affect the scope and breadth of the claim as originally presented and/or in the manner in which the claim was interpreted by the Examiner when applying prior art within the previous Office Action. As such, this claim is rejected under the same rationale given in the prior Office Action, and incorporated herein.

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(E) Claim 9 has been amended to now recite “wherein the formatted information includes lab result information, vital sign information, and prescription information” and “wherein the delivered information is associated with respective user-selectable ergonomic features to invoke display of the lab result information, the vital sign information, and the prescription information, and wherein each ergonomic feature is large enough to allow actuation via a user’s finger.”

Ballantyne discloses lab result information, vital sign information, and prescription information (col. 4, lines 35-36, col. 11, lines 18-22, and col. 17, lines 27-31 of Ballantyne; the Examiner interprets “temperature” and “pulse rate” to be forms of “vital sign information”).

Ballantyne does not expressly disclose wherein the delivered information is associated with respective user-selectable ergonomic features to invoke display of information and wherein each ergonomic feature is large enough to allow actuation via a user’s finger.

Brown discloses wherein the delivered information is associated with respective user-selectable ergonomic features to invoke display of information and wherein each ergonomic feature is large enough to allow actuation via a user’s finger (Fig. 3, col. 4, lines 49-54, and Fig. 12 of Brown).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Brown within Ballantyne. The motivation for doing so would have been to provide a user-friendly interface.

The remainder of claim 9 is rejected for the same reasons given in the previous Office Action, and incorporated herein.

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(F) Claim 17 has been amended to now recite “the ergonomic buttons include a button for invoking display of lab result information, a button for invoking display of the vital sign information, and a button for invoking display of the prescription information.”

Ballantyne discloses lab result information, vital sign information, and prescription information (col. 4, lines 35-36, col. 11, lines 18-22, and col. 17, lines 27-31 of Ballantyne; the Examiner interprets “temperature” and “pulse rate” to be forms of “vital sign information”).

Ballantyne does not expressly disclose ergonomic buttons for invoking display of the information.

Brown discloses ergonomic buttons for invoking display of information (Fig. 3, col. 4, lines 49-54, and Fig. 12 of Brown).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Brown within Ballantyne. The motivation for doing so would have been to provide a user-friendly interface.

(G) Claims 7, 15-16, 19, 21, and 23 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5,867,821) in view of Brown (5,918,603), and further in view of Walker et al. (US 6,302,844 B1).

(A) Referring to claim 3, Ballantyne and Brown do not disclose further comprising delivering one or more of said formatted medical records to a wireless telephone.

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Walker discloses transmitting information to a cellular telephone (col. 4, lines 43-48 of Walker).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Walker within Ballantyne and Brown. The motivation for doing so would have been to use a known device capable of receiving and transmitting information (col. 4, lines 43-48 of Walker).

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5,867,821) in view of Brown (5,918,603), and further in view of Nguyen et al. (US 2002/0023077 A1).

(A) Claim 6 has not been amended and is rejected for the same reasons given in the previous Office Action, and incorporated herein.

9. Claims 10-14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5,867,821) in view of Brown (5,918,603), and further in view of Chesanow ("PDAs for Doctors: Your ticket to fast, flawless prescribing").

(A) Claims 10-14 and 20 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

10. Claims 25-27 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5,867,821) in view of Kilgore et al. (US 2002/0072911 A1).



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(A) Claim 25 has been amended to now recite "wherein the main database comprises a census of each patient within the medical facility and an expected discharge time."

Ballantyne does not disclose wherein the main database comprises a census of each patient within the medical facility and an expected discharge time.

Kilgore discloses wherein the main database comprises a census of each patient within the medical facility and an expected discharge time (para. 5 of Kilgore)

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Kilgore within Ballantyne. The motivation for doing so would have been to provide hospital management with information to make management decisions that maintain or improve the quality of the health care (para. 5, lines 1-6 of Kilgore).

The remainder of claim 25 is rejected for the same reasons given in the previous Office Action, and incorporated herein.

(B) The amendment to claim 29 was made to change the claim's dependency. However, this change does not affect the scope and breadth of the claim as originally presented and/or in the manner in which the claim was interpreted by the Examiner when applying prior art within the previous Office Action. As such, this claim is rejected under the same rationale given in the prior Office Action, and incorporated herein.

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(C) Claims 26, 27, and 30 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

11. Claims 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5,867,821) in view of Felsher (US 2002/0010679 A1).

(A) Claim 32 has been amended to now recite "wherein each of said patient's medical status comprises an expected departure date and updating the database to include treatment updates comprises altering the expected departure date."

Ballantyne does not disclose wherein each of said patient's medical status comprises an expected departure date and updating the database to include treatment updates comprises altering the expected departure date.

Felsher discloses wherein each of said patient's medical status comprises an expected departure date and updating the database to include treatment updates comprises altering the expected departure date (para. 56 and para. 65 of Felsher; the Examiner interprets "discharge" to be a form of "departure" and "service" to be a form of "treatment").

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Felsher within Ballantyne. The motivation for doing so would have been to keep a record of findings from discharge summaries (para. 10 of Felsher).

The remainder of claim 32 is rejected for the same reasons given in the previous Office Action and incorporated herein.

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(B) The amendment to claim 34 was made to change the claim's dependency.

However, this change does not affect the scope and breadth of the claim as originally presented and/or in the manner in which the claim was interpreted by the Examiner when applying prior art within the previous Office Action. As such, this claim is rejected under the same rationale given in the prior Office Action, and incorporated herein.

### ***Response to Arguments***

12. Applicant's arguments filed 7/31/06 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 7/31/06.

(1) Applicant argues that Brown does not teach the requisite ergonomic actuator, button, or feature. The cited passage is entirely devoid of any discussion of any usage of the buttons to move or switch between portions of a patient medical record. Thus, Brown fails to teach the requisite ergonomic button or actuator of the present claim.

(2) Applicant argues that the motive cited in the Action for making the combination of Ballantyne and Brown is insufficient. In the Action, the Examiner cites the generic motive of providing a user-friendly interface as sufficient to lead one of ordinary skill to combine Ballantyne and Brown and arrive at the invention of the rejected claims. However, absent hindsight, there's no reasonable certainty that the present invention would result from this generalized motive.

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(3) At page 11, Applicant argues that the Examiner's treatment of the phrase "various types of information related to each patient" to be a form of census is tantamount to taking office notice regarding the definition of census employed within the field of medical records.

(A) As per the first argument, the Examiner gave the term "ergonomic" the broadest reasonable interpretation in light of Applicant's specification. At page 19, lines 4-6 of Applicant's specification, Applicant defines "ergonomic" as "designed so as to allow actuation without the need for a stylus, but rather may be actuated with a thumb or other finger." As such, the Examiner respectfully submits that Brown discloses an ergonomic interface (see the "hand-held unit" in Fig. 3 of Brown).

(B) In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(C) As per the third argument, the Examiner respectfully submits that Applicant has not provided a definition of "census employed within the field of medical records" within Applicant's originally filed specification. As such, the Examiner's

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broadest reasonable interpretation of the term "census" would include the hospital *tracking* various types of information related to *each patient* in the hospital, which is disclosed by Kilgore at paragraph 5.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

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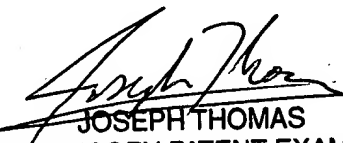
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Ln*

In

10-12-06

  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER